



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Charles R. Martin
County Auditor
Harrison County
Marshall, Texas

Dear Sir:

Opinion No. O-4585

Re: Would it be a violation of the nepotism laws of the State of Texas for a county judge to employ a stenographer under Article 3912e, who is a half second cousin to one of the county commissioners?

This is to acknowledge receipt of your letter requesting our opinion, from which we quote the following:

"Under Article 3912 e, section 13 (a), R. C. S. the law reads as follows:

"The Commissioners' Court may authorize the employment of a stenographer by the County Judge and pay for such services out of the general fund of the county to an amount not to exceed Twelve Hundred (\$1200.00) Dollars per year."

"QUESTION: Would it be a violation of the nepotism laws of the State of Texas, for a County Judge to employ a stenographer under the above mentioned article, who is a half second cousin to one of the County Commissioners?"

The nepotism statutes of this State are codified as Articles 432 to 438 of the Penal Code. Article 432 reads as follows:

"No officer of this State or any officer of any district, county, city, precinct, school district, or other municipal subdivision of this State, or any officer or member of any

State, district, county, city, school district or other municipal board, or judge of any court, created by or under authority of any general or special law of this State, or any member of the Legislature, shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of any such board, the Legislature, or court of which such person so appointing or voting may be a member, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever."

The other articles referred to particularize certain officers as coming within the provisions of the nepotism laws, denounce evasion of nepotism by trading, prohibit approval of illegal accounts, prescribe punishment for violation and enumerate certain exceptions. The quoted Article 432 is the only one deemed pertinent to your inquiry.

From a reading of the applicable statute it is observed that the offense consists of appointing, voting for or confirming the appointment of a person related within the prohibited degree of relationship. Article 3912e, section 3(a), Vernon's Annotated Civil Statutes, quoted by you, allows the Commissioners' Court to authorize the employment of a stenographer by the county judge, but the Commissioners' Court has no further jurisdiction in the matter. The authority to employ having been granted him, the county judge is clothed with the privilege of employing a stenographer of his choice. The Commissioners' Court need not be apprised of or advised the name of the person whom the county judge desires to appoint.

It is, therefore, the opinion of this department that it will not be a violation of the nepotism statutes for the county judge to employ a stenographer who is a relative of one of the county commissioners.

Yours very truly

APPROVED JUN 23, 1942

ATTORNEY GENERAL OF TEXAS

[Signature]
FIRST ASSISTANT
ATTORNEY GENERAL

[Signature]
By Benjamin Woodall
Assistant

